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## INTRODUCTION

Plaintiff, **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor (the “Secretary”), brings this action to secure unpaid wages and damages for employees who worked daily shifts at a Las Vegas calling center working the phones for a Las Vegas telemarketing company, but who were not paid minimum wage for the hours they worked. Although these workers are essential to Defendants’ business operations and are not in business for themselves, Defendants treat their employees as “independent contractors” who are not entitled to the wages and protections guaranteed by the Fair Labor Standards Act. Through this misclassification, Defendants also shift their costs as employers onto these workers, resulting in their employees improperly bearing the burden of Defendants’ portion of Social Security contributions, workers’ compensation insurance, and other payroll taxes and costs that an employer is required to pay under relevant law. Defendants’ actions harm not only their own employees but also law abiding employers who face unfair competition in the marketplace by Defendants’ illegal activity. The Secretary thus brings this case to rectify Defendants’ actions with respect to their employees, competitors, and the significant public interests at stake.

## NATURE OF THE ACTION

1. In this action, the Secretary seeks to enjoin defendants **WELLFLEET COMMUNICATIONS LLC** (“Wellfleet”) and its Manager, **ALLEN ROACH**, individually and as a managing agent, from violating the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (the “FLSA”), pursuant to section 17 of the FLSA, 29 U.S.C. § 217; and to recover amounts owed

1 under the FLSA owing to defendants' present and former employees, as listed by  
2 name in the attached Exhibit A, pursuant to section 16(c) of the FLSA, 29 U.S.C. §  
3 216(c).

4

5 **JURISDICTION**

6 2. Jurisdiction of this action is conferred upon the Court by FLSA §§  
7 16(c) and 17, 29 U.S.C. §§ 216(c) and 217(subject matter), and 28 U.S.C. §§ 1331  
8 (federal question) and 1345 (United States as plaintiff).

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10

**VENUE**

11 3. Venue lies in the United States District Court, District of Nevada,  
12 pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to  
13 these claims occurred in Las Vegas, Nevada.

14

**DEFENDANTS ARE EMPLOYERS UNDER THE FLSA**

15 4. Defendant Wellfleet Communications LLC is a Nevada limited  
16 liability company, in business as a telemarketing company that sells long distance  
17 telephone products for telephone companies such as AT&T, Verizon, and Birch  
18 Communications. Wellfleet's principal place of business is in Las Vegas, Nevada.  
19 At all relevant times, Wellfleet employed persons, including the persons listed on  
20 Exhibit A, to sell long distance phone services.

21

5. Defendant Allen Roach is the owner and manager of Wellfleet  
22 Communications LLC, and resides in Clark County, Nevada. At all relevant times,  
23 Mr. Roach acted directly or indirectly in the interest of Wellfleet Communications  
24 LLC in relation to the employees listed on Exhibit A, including the power to

25

1 determine employment practices, set work schedules, and set wage rates.  
2 Accordingly, he is an employer under FLSA § 3(d), 29 U.S.C. § 203(d).

3       6. Employees hired to call prospective customers and sell telephone  
4 products were required to enter into a standardized contract with “Wellfleet  
5 Communications, Inc.” that purportedly designates each of them as an  
6 “Independent Contractor/Direct Seller.”

7       7. Upon hire, Defendants trained employees on the tasks required of  
8 their employment, and provided scripts to be used when calling potential  
9 customers.

10       8. Defendants required employees to conduct their work onsite, at  
11 Wellfleet’s calling center in Las Vegas, Nevada.

12       9. Defendants required employees to work set shifts, and determined  
13 when employees could take breaks.

14       10. Defendants provided the equipment employees used for their work,  
15 including computers that identified and auto-dialed the telephone numbers  
16 employees called.

17       11. Defendants unilaterally determined the rate of pay for employees’  
18 work.

19       12. The economic realities of the employment relationship between  
20 Wellfleet’s employees and the Defendants establish that Wellfleet and Mr. Roach  
21 are each an “employer” within the meaning of FLSA Section 3(d), 29 U.S.C.  
22 203(d). As such, Defendants are jointly and severally liable for all back wages due  
23 to their employees.

24       13. By misclassifying their workers as independent contractors,  
25 Defendants shifted their costs as employers onto the Wellfleet employees. The

resulting costs -- of the employer's share of Social Security contributions, workers' compensation insurance, and Medicare taxes, among others -- constitute illegal deductions from the Wellfleet employees' wages.

4       14. Through these actions, Defendants were depriving, interfering, and  
5 impeding the ability of the Wellfleet employees, and derivatively the Secretary of  
6 Labor, to detect the basic circumstances of their employment, and discouraging,  
7 punishing and coercing them from exercising their rights as employees under the  
8 FLSA.

## **DEFENDANTS' EMPLOYEES ARE ENTITLED TO THE WAGES AND PROTECTIONS OF THE FLSA**

12        15. Defendants' activities constitute and at all relevant times have  
13 constituted related activities performed through unified operation or common  
14 control for a common business purpose, and are and at all relevant times have been  
15 an "enterprise" as defined in FLSA Section 3(r), 29 U.S.C. § 203(r).

16        16. At all relevant times, Wellfleet employees were or are engaged in  
17 commerce and/or in handling or working on goods that have been moved in  
18 commerce, including regularly making telephone calls to residents and small  
19 business owners in states outside of Nevada to sell telephone companies' products.  
20 Defendants' enterprise has, and at all relevant times has had, an annual gross  
21 volume of sales made or business done of no less than \$500,000.00, and said  
22 enterprise constitutes, and at all relevant times has constituted, an "enterprise  
23 engaged in commerce or in the production of goods for commerce" as defined by  
24 FLSA § 3(s), 29 U.S.C. § 203(s). As such, Wellfleet employees are covered by the  
25 FLSA, including its wage, recordkeeping, and anti-discrimination provisions.

1  
2  
3                   **DEFENDANTS VIOLATED THE FLSA**

4                   17. The Secretary incorporates by reference and realleges the allegations  
5 in paragraphs 1 to 16 of the Complaint.

6                   18. Since at least October 15, 2012, Wellfleet and Mr. Roach have  
7 repeatedly and willfully violated the provisions of sections 6 and 15(a)(2) of the  
8 FLSA, 29 U.S.C. §§ 206 and 215(a)(2), by paying their employees' wages at rates  
9 less than the federal minimum wage rate of \$7.25 per hour, including making  
10 illegal deductions from the wages of Wellfleet employees for the employers' share  
11 of Social Security and Medicare contributions and other costs that reduced  
12 employees' hourly rate below the federal minimum wage. Employees were not  
13 paid an hourly rate for the hours they worked, instead receiving a commission for  
14 successful sales and a bonus for their attendance, which resulted in employees  
15 receiving less than the federal minimum wage for the hours they worked.

16                   19. Since at least October 15, 2012, Wellfleet and Mr. Roach have  
17 repeatedly and willfully violated the provisions of sections 7 and 15(a)(2) of the  
18 FLSA, 29 U.S.C. §§ 207 and 215(a)(2), by failing to pay Wellfleet employees at a  
19 rate of time and one half the employees' regular rate for hours worked over 40 in a  
20 workweek. Some Wellfleet employees worked over 40 hours per week, but were  
21 not paid an overtime premium for their excess hours worked over 40.

22                   20. Since at least October 15, 2012, Wellfleet and Mr. Roach have  
23 repeatedly and willfully violated the provisions of sections 11(c) and 15(a)(5) of  
24 the FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5), by failing to maintain, keep, and  
25 preserve records of employees and the wages, hours and other conditions and

1 practices of employment maintained by them as prescribed by regulations  
2 promulgated by the Secretary pursuant to the authority granted in the FLSA and  
3 published in the Federal Register and known as Title 29, Code of Federal  
4 Regulations, Part 516.

5       21. Defendants misclassified Wellfleet employees as independent  
6 contractors and failed to keep time records that would adequately and accurately  
7 show, among other things, the hours worked each workday, the total hours worked  
8 each workweek, the deductions from their wages for the employers' costs and the  
9 amount paid, thereby depriving, interfering and impeding the ability of Wellfleet  
10 employees, and derivatively the Secretary of Labor, to detect, identify and have  
11 notice of the underpayment of minimum wages due under the FLSA.

12       22. Defendants have willfully and repeatedly violated the provisions of  
13 Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), by depriving, interfering and  
14 impeding the ability of Wellfleet employees, and derivatively the Secretary of  
15 Labor, to detect the basic circumstances of their employment and of their rights as  
16 employees under the FLSA, including the right to notify the Secretary of Labor of  
17 FLSA violations.

18       22. By the actions described above, Defendants have repeatedly and  
19 willfully violated, and are violating, the above-described provisions of the FLSA  
20 during the relevant statutory period.

21

### 22                   **PRAYER FOR RELIEF**

23       **WHEREFORE**, cause having been shown, Plaintiff prays for a judgment  
24 against defendants as follows:

25

1                   (a) For an Order pursuant to section 17 of the FLSA, 29 U.S.C. § 217,  
2 permanently enjoining and restraining Wellfleet and Mr. Roach, their agents, and  
3 those persons in active concert or participation with them, from prospectively  
4 violating Sections 15(a)(2), 15(a)(3), and 15(a)(5) of the FLSA, 29 U.S.C. §§  
5 215(a)(2), 215(a)(3), and 215(a)(5); and

6                   (b) For an Order pursuant to section 16(c) of the FLSA, 29 U.S.C. §  
7 216(c), finding Wellfleet and Mr. Roach liable for unpaid minimum wage and  
8 overtime compensation due under the FLSA to present and former employees of  
9 the Defendants, including the persons listed by name on the attached Exhibit A,  
10 and for liquidated damages equal in amount to the unpaid compensation found due  
11 to such employees;

12                  (c) In any instances where liquidated damages are not awarded, for an  
13 injunction issued pursuant to section 17 of the FLSA, 29 U.S.C. § 217, enjoining  
14 and restraining Wellfleet and Mr. Roach, their agents, and those persons in active  
15 concert or participation with them, from withholding payment of unpaid minimum  
16 wage and overtime compensation found to be due Defendants' employees,  
17 including the persons listed by name on the attached Exhibit A, plus pre-judgment  
18 interest thereon;

19                  (d) For an order providing such further legal and equitable relief as may  
20 be deemed appropriate, including equitable tolling of the applicable three-year  
21 statute of limitations to redress interference with, or delayed detection of, the  
22 violations of the FLSA by the Secretary due to Defendants' actions to confuse the  
23 workers as to their status as employees protected by the FLSA and/or to intimidate  
24 or coerce them from exercising their rights and status as an employee, and failure  
25

1 to maintain complete, accurate or full records as required by 29 U.S.C. §§211(c)  
2 and 215(a)(5); and,

3 (e) For an Order awarding the Secretary of Labor the costs of this action.

4  
5 Dated: October 7, 2016

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18 DEPARTMENT OF LABOR  
19 Attorneys for the Plaintiff